

NO. 82-927

Office-Supreme Court, U.S.
FILED

MAR 24 1983

ALEXANDER L. STEVAS,
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

FRANCIS X. BELLOTTI,
ATTORNEY GENERAL, et al.,

Appellants,

v.

MICHAEL J. CONNOLLY, et al.,

Appellees.

MEMORANDUM OF THE APPELLEE
DEMOCRATIC STATE COMMITTEE IN
RESPONSE TO THE SUPPLEMENTAL
JURISDICTIONAL STATEMENT OR
PETITION FOR CERTIORARI
OF FRANCIS X. BELLOTTI

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of Massachusetts

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TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Clark v. Rose</u> , 379 F.Supp. 73 (S.D.N.Y. 1974) (three judge court) <u>aff'd</u> 531 F.2d 56 (2d Cir. 1976)	10
<u>Cousins v. Wigoda</u> , 419 U.S. ...	12
<u>Democratic Party of U.S.</u> <u>v. Wisconsin</u> , 450 U.S. 107 (1981)	3
<u>Ray v. Blair</u> , 343 U.S. 214 (1952)	9
<u>Restivo v. Conservative</u> <u>Party</u> , 391 F.Supp. 813 (S.D.N.Y. 1973)	9
<u>Rivera-Rodriguez v. Popular</u> ... <u>Democratic Party</u> , U.S. ___, 72 L.Ed. 626 (1982)	12
<u>Sears v. Secretary of the</u> ... <u>Commonwealth</u> , 369 Mass. 392 (1975)	10
<u>Tansley v. Grasso</u> , 325 F.Supp . 513 (D. Conn. 1970)	7

STATUTES

Mass. Gen. Laws c. 53, 2	6
Mass. Gen. Laws c. 53, §37.....	11
Mass. Gen. Laws c. 53, §38.....	8
Mass. Gen. Laws c. 53, §44.....	4, 5, 11

TABLE OF CONTENTS

	<u>Pages</u>
INTRODUCTION	1
ARGUMENT	3
I. The Supplemental Jurisdictional Statement or Petition for Certiorari of the Attorney General Overstates the Breadth of the Opinion of the Supreme Judicial Court	3
II. The Failure to Implement the "15% Rule" In Connection With The Primary Would Render the Rule Meaningless ...	6
III. The "15% Rule" is Necessary to Protect the Associational Rights of the Democratic Party	7
IV. The Implementation of the "15% Rule" is Inconsistent With the Concept of Bossism	11
V. The "15% Rule" is an Attempt by the Democratic State Party to Provide Some Minimal Protection to the Associational Rights of its Members	12
CONCLUSION	12

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INTRODUCTION

On December 3, 1982, the Attorney General of the Commonwealth of Massachusetts ("the Attorney General") filed a Jurisdictional Statement seeking a review of a final judgment entered by the Massachusetts Supreme

Judicial Court on July 6, 1982. At the time the Attorney General filed his Jurisdictional Statement, the Supreme Judicial Court had not yet issued a written opinion. On December 6, 1982, a Jurisdictional Statement was filed in the related case of Langone, et al. v. Michael J. Connolly, et al., No. 82-936. On January 4, 1983, Appellee Democratic State Committee of Massachusetts ("the Committee") filed a Motion to Dismiss in both matters. On January 5, 1983, Appellee Michael Joseph Connolly ("Connolly") also filed a Motion to Dismiss in both matters.

On February 16, 1983, the Supreme Judicial Court issued its opinion in the matter below. On March 17, 1983, the Attorney General filed with this Court a Supplemental Jurisdictional Statement or Petition for Certiorari. This Memorandum is filed in response to certain points which were raised in

that Supplemental Jurisdictional Statement.

ARGUMENT

- I. The Supplemental Jurisdictional Statement or Petition for Certiorari of the Attorney General Overstates the Breadth of the Opinion of the Supreme Judicial Court.

The Attorney General's Supplemental Jurisdictional Statement states that:

"The Supreme Judicial Court has expanded [Democratic Party of the United States v. Wisconsin, 450 U.S. 107 (1981)] beyond the question of seating delegates in national nominating conventions. In the Supreme Judicial Court's view, all differences between state law and state party rules must be resolved in favor of the party rule."
[17] 1/

This statement does not accurately reflect the findings of the Supreme

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- 1/ The bracketed page references (e.g. [17]) are to the Attorney General's Supplemental Jurisdictional Statement or Petition For Certiorari.

Judicial Court; and distorts the position of that Court beyond recognition. At issue before the Supreme Judicial Court was the limited question of whether M.G.L. c. 53, §44 precluded the implementation of the "15% Rule" and whether implementation of the "15% Rule" interfered with the legislative intent in establishing a primary system. 2/ The Supreme Judicial Court found that not only did M.G.L. c. 53, §44 not preclude the

2/ The two questions before the Supreme Judicial Court were:

1. Whether all candidates who have complied with applicable statutory requirements must appear upon the Democratic state primary ballots, notwithstanding the failure to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the "Charter of the Democratic Party of the Commonwealth".

(continued)

implementation of the 15% Rule, but
that:

"[T]he 15% rule does not defeat the legislative purpose in adopting a primary system. We need not consider at what point the legislative purpose would be defeated by a different party rule requiring a higher percentage of delegate support." [A26]

Thus, it simply is not true that the Court ruled that all political party rules which conflict with state

2/ (continued)

2. Whether the decision by the Secretary of the Commonwealth that he will not place upon the Democratic state primary ballots those candidates who failed to obtain at least fifteen percent of the vote on any ballot of the Democratic Convention pursuant to Article Six, Section III of the "Charter of the Democratic Party of the Commonwealth", but otherwise complied with the statutory requirements to have their names placed upon the ballots violated the constitutional or statutory rights of the voters, the candidates, or their supporters?

statutes must be decided in favor of the party rule. Rather, the Court limited its decision to the narrow question of the validity of the "15% Rule", and that question only.

II. The Failure to Implement the "15% Rule" In Connection With The Primary Would Render the Rule Meaningless.

The Attorney General takes the position that if the 15% Rule was not implemented as it was by Connolly, the Democratic Party would still be free to adopt the 15% Rule and impose the Rule as it so chose. The Attorney General states:

"The party is free to adopt the rule and to enforce the rule in any manner it chooses. For example, it can refuse to endorse or recognize candidates that receive less than 15% of the convention vote." [21]

That statement is wrong. Under Massachusetts law the winner of the Democratic primary is the candidate of the Democratic party. M.G.L. c.53, §2.

By law, that person, and no other, will be the bearer of the Democratic Party banner in the general election. Without Connolly's implementation, the "15% Rule" would have been meaningless.

The purpose of the "15% Rule" is to ensure not only that all of the candidates in the Democratic Party primary have demonstrated some minimal support among the regular and active members of the party, but that the same is true of the Democratic candidate in the general election. This is a goal which is not only that of that Party but that of the State as well. If the Democratic candidate is not really a Democrat, the state's interest in stable existing parties is defeated. Tansley v. Grasso, 315 F.Supp. 513, 517 (D. Conn. 1970).

III. The "15% Rule" is Necessary to
Protect the Associational Rights
of the Democratic Party

In Massachusetts, on primary day
an independent voter can declare
himself a Democrat, vote in the primary
and then, immediately after depositing
his ballot, declare himself an
"independent" once again. M.G.L. c.53,
§38. In its opinion, the Supreme
Judicial Court recognized that:

"[S]uch affiliation demonstrates
neither commitment to, nor
acceptance of, the political,
social, and economic philosophies
and programs for which the party
has organized. '[A] political
party has a legitimate -- indeed,
compelling -- interest in ensuring
that its selection process
accurately reflects the collective
voice of those who, in some
meaningful sense, are affiliated
with it. Freedom of association
would prove an empty guarantee if
associations could not limit
control over their decisions to
those who share the interests and
persuasions that underlie the
association's being.'" (emphasis
in original) [A.22].

The Attorney General states in
response:

"There is no basis in law or fact for limiting the constitutional rights of political association based upon the duration of the association. [23].

That argument ignores those cases which recognize the right of a party to ensure that those participating in a party decision share the aims and interests of the party. See Ray v. Blair, 343 U.S. 214 (1952) (upholding the constitutionality of a party requirement that candidates for its nomination as Presidential Electors pledge themselves to vote for the party's Presidential and Vice-Presidential nominees, since such a requirement served to protect the party "from intrusion by those with adverse political principles." 343 U.S. at 221-22); Rosario v. Rockefeller, 410 U.S. 752 (1973) (cutoff date for enrollment, which occurs about eight months before a presidential, and 11 months before nonpresidential,

primary, was not unconstitutionally arbitrary when viewed in light of legitimate state purpose of avoiding disruptive party raiding); Restivo v. Conservative Party, 391 F.Supp. 813 (S.D.N.Y. 1973); and Clark v. Rose, 379 F.Supp. 73 (S.D.N.Y. 1974) (three judge court) aff'd. 531 F.2d. 56 (2d Cir. 1976), where the courts upheld a party rule that required party non-members to secure 25% of the vote of the party's state committee before being allowed to participate in the party primary.

The first and foremost purpose of a political party is to chart a direction for the party and its ideals. It is the party and not the state which has primary responsibility to protect the party's interest. So long as the party's restrictions on candidate selection are reasonable, the state should not, and cannot,

interfere. See Sears v. Secretary
of the Commonwealth, 369 Mass. 392
(1975).

IV. The Implementation of the "15% Rule" is Inconsistent With the Concept of Bossism.

The Attorney General argues that the Massachusetts primary system, open to independent voters, is intended to increase voter participation and to eliminate political bossism and implies that the "15% Rule" means a return to smoke-filled rooms. It is important to note what the Supreme Judicial Court said on this point:

"Popular participation in the candidate selection process is assured by G.L. c. 53, §44, requiring nomination papers signed by at least 10,000 registered voters, and by c. 53, §37, which provides that primary votes may be cast by persons who are unenrolled until they go to the polls. This broad citizen participation is not negated by application of the 15% rule. The fact that five candidates for selection as the Democratic party's candidate for Lieutenant Governor received sufficient delegate support to satisfy the party charter

requirement warrants the inference that the selection process was not dominated by party bosses."
[A.25-26]

- V. The "15% Rule" is an Attempt by the Democratic State Party to Provide Some Minimal Protection to the Associational Rights of its Members.
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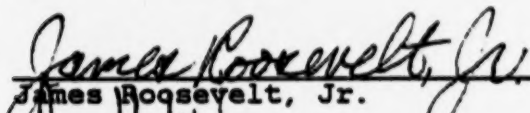
The fact that five candidates were able to satisfy the 15% Rule undercuts the Attorney General's fear that the Rule would interfere with the purpose and effect of an open primary. The 15% Rule is, as the Supreme Judicial Court found, a proper method of protecting the associational rights which have been recognized in this Court in Rivera-Rodriguez v. Popular Democratic Party, ___ U.S. ___, 72 L.Ed 2d 626 (1982); Democratic Party v. Wisconsin, 450 U.S. 107 (1981) and Cousins v. Wigoda, 419 U.S. 477 (1975).

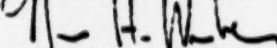
CONCLUSION

For the foregoing reasons and the reasons previously stated in the Motion to Dismiss of Appellee Democratic State Committee of Massachusetts, Appellant Attorney General's Appeal should be dismissed and his Petition for Certiorari denied.

DEMOCRATIC STATE COMMITTEE

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Dated: March 23, 1983